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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES and NEW YORK STATE *ex rel.*
INTEGRITY ADVOCATES LLC,

Plaintiffs,

vs.

COMPREHENSIVE ANESTHESIA SPECIALISTS,
P.C. ("CAS"); AMBULATORY VASCULAR CARE
MANAGEMENT, LLC; AV CARE CENTERS;
RICHARD J. HARRIS; ACQUISTA AND MATTOO
MEDICAL ASSOCIATES, PLLC; MATTOO BHAT
MEDICAL ASSOCIATES, P.C.; and DR. FENG QIN,

Defendants.

No. 12 Civ. 2327 (LLS)

UNITED STATES OF AMERICA;

Plaintiff-Intervenor,

vs.

MATTOO & BHAT MEDICAL ASSOCIATES, P.C.,
and DR. FENG QIN,

Defendants.

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

This Settlement Agreement ("Agreement") is entered into by and among the United

States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States"), Defendant Mattoo & Bhat Medical Associates, P.C. ("MBPC" or "Defendant"), and Relator Integrity Advocates LLC ("Relator") (collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

WHEREAS, MBPC is a nephrology medical practice established in 1993, which, in or about April 2010, began to operate two office-based surgery facilities in Manhattan and Queens (the "AV Care Centers"), which were managed by Ambulatory Vascular Care Management, LLC ("AV Care") pursuant to an agreement;

WHEREAS, the AV Care Centers operated from on or about April 2010 until on or about April 2012 ("the relevant period");

WHEREAS, MBPC employed Dr. Feng Qin ("Dr. Qin") as a vascular surgeon to work at the AV Care Centers;

WHEREAS, the AV Care Centers provided vascular surgery services to patients with end-stage renal disease ("ESRD") who received dialysis, and required well-functioning vascular access in order for them to be effectively dialyzed: two of the most common procedures performed at the AV Care Centers were fistulagrams (a radiological procedure in which dye is injected into the patient's vein or artery to visualize it) and angioplasties (in which wires and balloons are inserted into veins or arteries that have narrowed in order to restore the blood flow);

WHEREAS, the patients treated at the AV Care Centers were all enrolled in the Medicare program established by Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.* ("Medicare");

WHEREAS, Relator is a limited-liability corporation whose members are Larry Lee, M.D.; Damion Sanchez, M.D.; and Xavier Vicioso, M.D.;

WHEREAS, on March 23, 2012, Relator filed a *qui tam* complaint in the above-captioned action in the United States District Court for the Southern District of New York, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action");

WHEREAS, the United States intervened in the Civil Action on April 30, 2015, as against MBPC and Dr. Qin;

WHEREAS, the United States contends that MBPC submitted or caused to be submitted claims for payment pursuant to the Medicare Program for services rendered by its providers, including Dr. Qin;

WHEREAS, the United States' Complaint-in-Intervention ("United States Complaint") alleges that from April 2010 to April 2012, MBPC and Dr. Qin performed and billed Medicare for fistulagrams and angioplasties without having the required clinical findings to support such billing and performed routine fistulagrams for screening purposes (the "Covered Conduct"), resulting in violations of the FCA;

In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Parties consent to this Court's exercise of personal jurisdiction over each of them with respect to this action.
2. MBPC shall pay to the United States ONE MILLION DOLLARS (\$1,000,000.00) (the "MBPC Settlement Amount") no later than 30 days after the Effective Date

of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.

3. MBPC admits, acknowledges, and accepts responsibility for the following facts during the relevant period:

- a) MBPC, established in approximately August 10, 1993, is a nephrology medical practice.
- b) In or about 2010, MBPC received accreditation from the American Association for Accreditation of Ambulatory Surgical Facilities to operate an office-based surgery ("OBS") facility in Manhattan and in Queens (collectively "the OBS facilities").
- c) MBPC's OBS facilities operated from about April 2010 through about April 2012. The OBS portion of MBPC's practice was managed by AV Care pursuant to a license and management agreement.
- d) MBPC's OBS patients were individuals with ESRD who regularly required, and received, dialysis. These patients required well-functioning vascular access in order for them to be effectively dialyzed.
- e) MBPC's OBS facilities, known as AV Care Centers, provided ESRD-related vascular access services, such as fistulagrams (a radiological procedure in which dye is injected into the patient's vein or artery to visualize it) and angioplasties (in which wires and balloons are inserted into veins or arteries that have narrowed in order to restore the blood flow).
- f) MBPC employed or contracted with surgeons to perform fistulagrams and angioplasties at its OBS facilities.

- g) Local Coverage Determination L30737, Dialysis Coverage Maintenance, issued by National Government Services, Inc., on or about June 1, 2010, as amended over time (the "LCD"), states that "[t]ypically, the clinical examination provides adequate information to determine whether there is hemodynamically significant dialysis shunt dysfunction," and listed certain "clinical findings [that] are considered diagnostically specific and appropriate indications to initiate therapies to re-establish physiologically appropriate flow in the dialysis fistula."
- h) The LCD provided that fistulagrams "performed to evaluate an AV access on a routine basis in the absence of signs and symptoms, the services are considered monitoring, and are not separately covered by Medicare." The LCD further stated that angioplasty "is not necessary for all poorly functioning AV dialysis accesses. Coverage will be considered if there is documentation supporting the presence of residual, hemodynamically significant stenosis, generally >50 percent of the vessel diameter."
- i) As a regular practice, AV Care routinely scheduled patients for fistulagrams and angioplasties as many as three months in advance, and MBPC surgeons performed these prescheduled fistulagrams as a matter of routine even if the patient presented without a clinical reason for the fistulagram or indications of difficulty with dialysis.
- j) From time to time, a surgeon under MBPC contract during the relevant period of time performed angioplasties on certain patients at the Manhattan OBS facility where the patient information and records did not support "the

presence of residual, hemodynamically significant stenosis, generally >50 percent of the vessel diameter.”

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon MBPC’s full payment of the MBPC Settlement Amount, the United States releases MBPC, its parents, subsidiaries, and all of its current and former officers, directors, employees (except Dr. Qin), shareholders, and assigns (the “MBPC Releasees”) from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Conditioned upon MBPC’s full payment of the MBPC Settlement Amount and the additional amount provided for in this Paragraph to be paid to Relator by MBPC for attorneys’ fees and costs, Relator, for itself and for its members, successors, attorneys, agents, and assigns, releases MBPC, its agents, attorneys, owners, successors, and assigns: (a) from any claim Relator has or could have had on behalf of the United States for the Covered Conduct and/or by reason of any cause, matter, thing, fact, circumstance, event or agreement relating to or arising from the Relator’s Complaint or the United States Complaint under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, negligence, unjust enrichment, and fraud; and (b) from any claim that Relator has asserted or could have asserted; or may assert in the future for any acts or omissions that predated this Agreement. MBPC agrees to pay Relator \$64,000 in full satisfaction of all attorneys’ fees and costs that Relator could have claimed against MBPC and its owners,

successors, attorneys, agents and assigns pursuant to 31 U.S.C. § 3730(d) (the "Relator Attorneys' Fee Payment"), no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel.

6. In consideration of MBPC's obligations in the Agreement and the Integrity Agreement ("IA"), entered into between OIG-HHS and MBPC, and conditioned upon MBPC's full payment of the MBPC Settlement Amount, OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7(b)(f) against MBPC under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 7 below (concerning excluded claims) and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude MBPC from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for the conduct and practices, for which claims have been reserved in Paragraph 7 below.

7. Notwithstanding the releases given in Paragraphs 4, 5, and 6 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

8. Relator and its members, successors, attorneys, agents, and assigns shall not object to this Agreement, and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned on Relator's receipt of the payment described in Paragraph 1 of the Stipulation and Order of Settlement and Release between Relator and the United States entered into simultaneously with this Agreement (the "Relator Share Payment"), Relator, for itself, and for its members, successors, attorneys, agents, and assigns, release, waive, and forever discharge the United States, its agencies, officers, employees, servants, and agents, from any claims, known or unknown, arising from the filing of the Relator's Complaint and from any claims under 31 U.S.C. § 3730.

9. MBPC waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the MBPC Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. MBPC fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of

every kind and however denominated) that MBPC has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Civil Action, the Covered Conduct, and the United States' investigation and prosecution thereof.

12. MBPC for itself and its owners, successors, attorneys, agents and assigns, fully and finally releases the Relator and its members Larry Lee, M.D.; Damion Sanchez, M.D.; and Xavier Vicioso, M.D, and their agents, attorneys, successors and assigns, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that MBPC has asserted, could have asserted, or may assert in the future against Relator or its members, related to the Covered Conduct and the Relator's investigation and prosecution thereof, and for any acts or omissions that predated this Agreement.

13. The MBPC Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any federal contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any federal payer, related to the Covered Conduct; and MBPC agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. MBPC agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of MBPC, its

present or former officers, directors, employees (including Dr. Qin), shareholders, and agents in connection with:

- i. the matters covered by this Agreement;
- ii. the United States' audit(s) and investigation(s) of the matters covered by this Agreement;
- iii. Defendant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement;
- v. the payments Defendant makes to the United States pursuant to this Agreement and any payments that Defendant may make to Relator, including costs and attorneys' fees; and
- vi. the negotiation of, and obligations undertaken pursuant to any

IA to:

- a. retain an independent review organization to perform annual reviews as described in any IA;

and

- b. prepare and submit reports to the OIG-HHS

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in Paragraph 14.a.(vi) that may

apply to the obligations undertaken pursuant to any IA affects the status of costs that are not allowable based on any other authority applicable to Defendant.

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendant, and Defendant shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendant or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendant further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendant or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information

reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs.

Defendant agrees that the United States, at a minimum, shall be entitled to recoup from them any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendant or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

- d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Defendant's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Except as expressly provided herein, this Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for herein.

16. Defendant agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents,

sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

17. Except as provided for in Paragraph 5, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Subject to the exceptions set forth in this Agreement, and in consideration of MBPC's obligations in this Agreement, conditioned upon MBPC's full payment of the Settlement Amount, the Government shall dismiss with prejudice the United States Complaint and, conditioned upon Relator's receipt of the Relator Share Payment and the Relator Attorney's Fee Payment, the Relator shall dismiss with prejudice the Relator's Action.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

23. This Agreement is binding on Defendant's owners, successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's members, successors, transferees, heirs, and assigns.

25. The Effective Date of this Agreement is the date it is entered by the Court.

26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Signatures delivered by facsimile transmission or as .pdf attachments to emails shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

Dated: New York, New York
April 30, 2015

PREET BHARARA
United States Attorney for the
Southern District of New York

By: 

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